



Guide for Complying with Newly-Revised Regulations for Atlantic Swordfish Retention Limits and Atlantic HMS Limited Access Vessel Upgrading Restrictions

**National Marine
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Highly Migratory Species Division

INTRODUCTION – Atlantic highly migratory species (HMS) including tunas, swordfish, sharks, and billfish are managed by the National Marine Fisheries Service (NMFS) under the authority of the Secretary of Commerce, with consideration for the domestic and international aspects of these fisheries.

NMFS has recently amended several HMS regulations to provide additional opportunities for U.S. fishermen to more fully harvest the domestic swordfish quota, which is based upon the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). These amendments affect swordfish retention limits for vessels issued Incidental swordfish permits, HMS Angling category permits, and HMS Charter/headboat permits. Additionally, regulations governing HMS limited access vessel upgrading restrictions have been amended.

This guide is intended to provide a plain-language summary of how to comply with the new regulations, and is produced in compliance with Section 212 of the Small Business Regulatory Enforcement Fairness Act. For the official and complete set of regulations, please see 50 CFR part 635 and other relevant parts of the CFR (electronic version of CFR at www.gpoaccess.gov), and the *Federal Register*. Since fishery rules frequently change, fishermen must familiarize themselves with the latest regulatory updates and are responsible for complying with the current official regulations. If there is a discrepancy between the regulations in 50 CFR part 635 or other applicable CFR parts, and the answers in this Guide, the regulations will take precedence.

You may request a copy of a particular rule or current updates by calling the NMFS HMS Management Division at (301) 713-2347 or by viewing the HMS website at www.nmfs.noaa.gov/sfa/hms.

I. RETENTION LIMITS FOR VESSELS ISSUED INCIDENTAL SWORDFISH PERMITS

Q1: *Under the new regulations, how many swordfish may I keep if I have an incidental swordfish permit?*

A: Effective July 9, 2007, if the incidental swordfish quota has not been met, vessels issued valid incidental swordfish permits are allowed to retain 30 swordfish per trip for all authorized gears, except that vessels in the squid trawl fishery are limited to 15 swordfish per trip¹. These incidental limits are applicable regardless of whether the directed fishery is open or closed. However, if the incidental quota has been met, no retention of swordfish is allowed. An incidental (or directed) swordfish permit is valid only when the vessel has on board a valid limited access permit (LAP) for shark and a valid Atlantic Tunas Longline category permit issued for such vessel. Thus, for incidental (or directed) permit holders, swordfish may not be retained, possessed, or sold without both of these other two permits.

II. RETENTION LIMITS FOR VESSELS ISSUED SWORDFISH DIRECTED OR HANDGEAR PERMITS

Q1: *Do the new regulations change the retention limit for vessels issued swordfish directed or swordfish handgear permits?*

¹ A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board, and when squid constitute not less than 75% by weight of the total fish on board or offloaded.

A: No. When the directed North Atlantic swordfish fishery is open, there is no swordfish retention limit for vessels issued directed or handgear permits. When the directed North Atlantic swordfish fishery is closed, handgear fishermen may land two swordfish per trip; however, harpoons are not permitted during a directed fishery closure. Directed swordfish permit holders may keep up to 15 swordfish from the North Atlantic per pelagic longline trip during a directed fishery closure. These retention limits may be adjusted. There are no retention limits for swordfish in the South Atlantic when the directed fishery is open, and pelagic longline is on board. However, when the South Atlantic swordfish fishery is closed, no South Atlantic swordfish may be retained.

III. RECREATIONAL SWORDFISH RETENTION LIMITS

Q1: *Under the new regulations, how many swordfish may I keep if I have an HMS Angling category permit?*

A: Effective July 9, 2007, one North Atlantic swordfish per person, up to four per vessel per trip may be retained. Recreational anglers may not land any Atlantic swordfish south of 5° N. latitude.

Q2: *Under the new regulations, how many swordfish may I keep if I have an HMS Charter/Headboat permit?*

A: Effective July 9, 2007, charter vessels may retain one North Atlantic swordfish per paying passenger, up to six per vessel per trip. Headboat vessels may retain one North Atlantic swordfish per paying passenger, up to 15 per vessel

per trip. The captain and crew do not count when determining the per passenger vessel limit. As defined in 50 CFR 600.10, a charter boat means a vessel that is less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire. A headboat means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. Recreational anglers may not land any Atlantic swordfish south of 5° N. latitude.

IV. HMS LIMITED ACCESS VESSEL UPGRADING RESTRICTIONS

Q1: *Do the new regulations change the upgrading and/or permit transfer upgrading restrictions for vessels issued HMS limited access permits (LAPs)?*

A: Yes. The vessel upgrading restrictions will differ, depending upon whether a vessel is concurrently issued, or is eligible to renew, each of the following three LAPs on August 6, 2007: 1) incidental or directed swordfish permit; 2) incidental or directed shark permit; and, 3) an Atlantic Tunas Longline category permit.

Q2: *How will I know if, and when, my vessel and its permits are eligible for the new upgrading allowances?*

A: NMFS will notify all HMS limited access permit holders by mail, after August 6, 2007, regarding whether or not their vessel(s) and permits meet the criteria for the new upgrading allowances. NMFS will also specify the maximum upgrade allowances for each swordfish, shark, and tuna longline

limited access permit. It may take up to a month after August 6, 2007 to receive this notification. **Prior to this notification, all HMS limited access permit holders must comply with the current vessel upgrading regulations described in Q6.** Please refer to Q5 below for a complete description of the new vessel upgrading restrictions that will become effective for eligible vessels and permits after August 6, 2007.

Q3: *Why is NMFS establishing a date of August 6, 2007 to determine which vessels and permits are eligible for the new, larger upgrade allowances?*

A: This date provides time for persons to obtain and transfer permits, if desired, for their vessels to become eligible for the new upgrade allowances. Because numerous permits may be in transfer between persons and/or vessels at any point in time, NMFS needs to establish a specific date upon which the three necessary permits are required to be issued to a vessel, so that NMFS can determine which permits and vessels are eligible for the new upgrade allowances. Please refer to Q9 – Q13 for more information regarding permit transfers.

Q4: *What are vessel baseline specifications?*

A: Vessel baseline specifications are the respective specifications (LOA, GRT, NT, and HP) of the first vessel that was initially issued a LAP or, if applicable, that vessel's replacement owned as of May 28, 1999. Vessel upgrades are measured relative to these baseline specifications.

Q5: *My vessel has been determined to have concurrently been issued, or be*

eligible to renew, these three LAPs (incidental or directed swordfish permit; incidental or directed shark permit; and an Atlantic Tunas Longline category permit) on August 6, 2007. What will be the new upgrading restrictions for this vessel and its permits?

A: Swordfish directed permits, shark directed permits, and Atlantic Tunas Longline category permits issued to vessels that are concurrently issued, or are eligible to renew, these three LAPs (incidental or directed swordfish permit, incidental or directed shark permit, and an Atlantic Tunas Longline category permit) on August 6, 2007 will be eligible for vessel upgrades, or permit transfers to other vessels, only if the upgrade or permit transfer does not result in an increase of more than 35 percent in length overall (LOA), gross registered tonnage (GRT), or net tonnage (NT), as measured relative to the vessel baseline specifications. Horsepower (HP) will not be restricted for these vessels. **Please note that, if a vessel has permits with differing maximum allowable upgrade specifications, any upgrade, whether through refitting, replacement, or transfer, may not exceed the specifications of the permit with the smallest allowable upgrade specifications.** For example, if a vessel has been issued a swordfish directed permit with a maximum allowable upgrade of 85 ft (LOA), a shark directed permit with a maximum allowable upgrade of 55 ft (LOA), and an Atlantic Tunas Longline category permit with a maximum allowable upgrade of 75 ft (LOA), then that vessel may not be increased in length to more than 55 ft (LOA).

Q6: *My vessel has been determined not to have concurrently been issued, or is not eligible to renew, these three permits on August 6, 2007. For example, it has only a directed shark permit, or only a swordfish handgear permit. What will be the upgrading restrictions for this vessel?*

A: The upgrading restrictions will remain unchanged for vessels that do not concurrently possess, or are not eligible to renew, these three LAPs (incidental or directed swordfish permit; incidental or directed shark permit, and an Atlantic Tunas Longline category permit) on August 6, 2007, with one minor exception (see Q8 for a description). Therefore, limited access permit holders, other than those possessing only incidental permits, must continue to comply with the existing upgrade restrictions which specify that vessels may be upgraded, or permits may be transferred to another vessel, only if the upgrade or permit transfer does not result in an increase in HP of more than 20 percent, or an increase of more than 10 percent in LOA, GRT, or NT, as measured relative to the vessel baseline specifications. Incidental catch LAPs are not subject to the vessel upgrading restrictions.

Q7: *I have an incidental swordfish or incidental shark LAP. If incidental permits are not subject to vessel upgrading restrictions, then how do the new regulations affect me?*

A: Incidental catch LAPs are not subject to vessel upgrading restrictions. However, incidental swordfish permits are valid only when a vessel also has been issued a valid limited access permit for shark, and a valid Atlantic Tunas

Longline category permit. If a vessel has been issued only an incidental swordfish permit, then swordfish cannot be retained for a commercial purpose without the other two permits on board. Therefore, because an incidental swordfish permit also requires an Atlantic Tunas Longline category permit and a shark LAP to be valid, the upgrading restrictions would apply. Incidental shark permits do not require the other two permits to be valid. Therefore, if a vessel has only been issued an incidental shark permit, there are no upgrading restrictions. Please refer to Table 1 for a complete description of how the various upgrading restrictions may affect you, depending upon the specific permits that you have been issued.

Q8: *If my vessel has already been upgraded once, whether through refitting, replacement or transfer, may it be upgraded again?*

A: Yes. NMFS has removed restrictions specifying that a vessel may be upgraded only once. Also, restrictions have been removed specifying that if any of the three specifications for vessel size (LOA, GRT, NT) is increased, any increase in the other two must be performed at the same time. Therefore, effective July 9, 2007, all HMS limited access permit holders will be allowed to incrementally increase their vessel's size and horsepower, up to the maximum allowable specifications.

Q9: *My vessel has not concurrently been issued, or is not eligible to renew, the three limited access permits (incidental or directed swordfish permit; incidental or directed shark permit; and an Atlantic Tunas Longline category*

permit). However, I would like to transfer other permit(s) to my vessel in order for it to become eligible for the new, larger upgrade allowances. Is that permissible?

A: Yes. In order to be eligible for the larger upgrade allowances, all requests for permit transfers and completed applications must be received by NMFS by August 6, 2007. **However, when transferring permits to become eligible for the larger upgrade allowances, the transfer must comply with existing regulations which specify that the permit transfer may not result in an increase in HP of more than 20 percent, or an increase of more than 10 percent in LOA, GRT, or NT, as measured relative to the vessel baseline specifications.** After all of the permit transfer requests and completed applications have been processed, NMFS will notify all HMS limited access permit holders of their maximum vessel upgrade allowances, and whether they qualify for the larger allowances. It may take up to a month after August 6, 2007 to receive this notification. Please refer to Q10 - Q13, below, for additional information regarding permit transfers.

Q10: *Where do I send my permit transfer requests and completed applications?*

A: To transfer an incidental or directed swordfish permit, or an incidental or directed shark permit, applicants must submit a request and a completed application(s) to the Southeast Regional Permits Office (see Contact List). To transfer an Atlantic Tunas Longline category permit, applicants must submit a request and a completed application to

the HMS Office located in Gloucester, MA (see Contact List).

Q11: *What is a “completed application?”*

A: An application is considered complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information, as required by NMFS. Please refer to Q13, which describes the specific information that must be submitted to transfer a permit. You may also contact the appropriate NMFS office (see Contact List) for more information regarding the necessary information, prior to submitting permit transfer requests and permit applications.

Q12: *What if I am not able to submit a completed application so that NMFS receives it by August 6, 2007? Could my vessel still become eligible for the new, larger upgrade allowances as a result of the permit transfer?*

A: No. Incomplete permit applications, and applications received after August 6, 2007, will not entitle a permit transfer to a vessel, so that it becomes eligible for the new, larger upgrade allowances. Incomplete or late permit transfer applications will remain subject to the current upgrading restrictions that are described in Q6.

Q13: *How do I transfer HMS LAPs to become eligible for the larger upgrade allowances?*

A: The transferee (*i.e.*, the person to whom the permit will be transferred) must submit the following information, so that it is received by the appropriate NMFS office by August 6, 2007.

Transfer Requirements for Swordfish and Shark LAPs

- Completed permit application;
- Original LAP(s) with signatures and dates of signatures of both parties to the transaction (seller and buyer) on the back of the permits(s);
- Current (not expired) and valid U.S. Coast Guard documentation or state registration for the vessel to which the permits are to be transferred;
- If vessel to which the permits are to be transferred is leased, a copy of the lease agreement between the vessel lessee and lessor;
- Appropriate workshop certificates for owner or operator of the vessel to which the permits are to be transferred (if longline or gillnet gear will be used).
- Proper payment, as described in the application instructions.

In addition, both the permit transferor and the permit transferee must be up to date on reporting requirements (*e.g.*, logbooks).

For clarification, or confirmation, of transfer requirements, prospective swordfish and shark permit transfer applicants are encouraged to contact the SERO permits office directly at (727) 824-5326.

Transfer Requirements for Atlantic Tunas Longline Category Permit

- Completed Atlantic Tunas vessel permit application;
- The actual permit being transferred with signatures of

- both parties to the transaction (seller and buyer), if available;
- The bill of sale signed by both parties (seller and buyer);
- Copy of the U.S. Coast Guard documentation or state registration for the vessel the permit is being transferred from;
- Copy of the USCG documentation or state registration for the vessel to which the permits are to be transferred;
- Proper payment, as described in the application instructions.

Q14: *I have been issued, or am eligible to renew one, or more, of the three necessary LAPs (incidental or directed swordfish permit; incidental or directed shark permit; and Atlantic Tunas Longline category permit). However, these permits are not assigned to a specific vessel (NOVESSID). Are these permits eligible for the new larger upgrade allowances?*

A: No. In order to be eligible for the new larger upgrade allowances, a vessel must concurrently be issued, or eligible to renew, the three necessary permits on August 6, 2007. However, owners of directed or incidental swordfish limited access permits, directed or incidental shark limited access permits, and Atlantic Tunas Longline category permits that are not assigned to a specific vessel may transfer these LAPs to a vessel, so that it is eligible for the

larger upgrade allowances. Please refer to Q9 - Q13 for additional information regarding permit transfers. LAP's that are not assigned to a specific vessel (NOVESSID) must comply with the current vessel upgrading regulations described in Q6.

Q15: *What if I am not able to attend a scheduled workshop and obtain a workshop certificate within the required timeframe to submit a completed application for a permit transfer to become eligible for the new, larger upgrade allowances?*

A: NMFS must receive a permit transfer request and a completed permit application by August 6, 2007. For permit transfers, the transferee (*i.e.*, the person to whom the permit will be transferred) may be required to submit a "Protected Species Safe Handling, Release, and Identification" workshop certificate. These workshops are conducted regularly in different locations. NMFS has scheduled four workshops during July of 2007. If an applicant is not able to attend a scheduled workshop within the required timeframe, a private workshop may be scheduled. However, private workshops are conducted at your cost, and are contingent upon the availability of the course instructors. To schedule a private workshop, please contact Aquatic Release Conservation (ARC) at (877) 411-4272.

Contact List

For Atlantic Swordfish and Shark Permits:

NMFS Southeast Region Permit Office
263 13th Avenue South
St. Petersburg, FL 33701
(727) 824-5326

For Atlantic Tunas Longline Category Permit:

HMS Northeast Office
One Blackburn Drive
Gloucester, MA 01930-2298
(978) 281-9260

Other Questions?

HMS Headquarters - (301) 713-2347
HMS Southeast Office – (727) 824-5399

Table 1 – Description of Vessel Upgrading Restrictions for HMS Permit Combinations.

Permit(s)	Upgrading Restrictions	Other Swordfish Restrictions
Incidental shark permit only	No upgrading restrictions	
Incidental swordfish permit only	No upgrading restrictions	Tunas Longline permit & Shark LAP required for swordfish retention
Incidental swordfish & Incidental shark permits	No upgrading restrictions	Tunas Longline permit required for swordfish retention
Swordfish Handgear permit only	10% LOA, GRT, & NT; 20% HP	
Directed shark permit only	10% LOA, GRT, & NT; 20% HP	
Directed swordfish permit only	10% LOA, GRT, NT; 20% HP	Tunas Longline permit & Shark LAP required for swordfish retention
Directed swordfish & Directed shark permits	10% LOA, GRT, & NT; 20% HP	Tunas Longline permit required for swordfish retention
Incidental swordfish & Directed shark permits	10% LOA, GRT, & NT; 20% HP	Tunas Longline permit required for swordfish retention
Directed swordfish & Incidental shark permits	10% LOA, GRT, & NT; 20% HP	Tunas Longline permit required for swordfish retention
Concurrently issued, or eligible to renew, Incidental shark; Incidental swordfish; and Atlantic Tunas Longline category permit on August 6, 2007.	35% LOA, GRT, & NT; no restrictions on HP	
Concurrently issued, or eligible to renew, Directed shark; Directed swordfish; and Atlantic Tunas Longline category permit on August 6, 2007.	35% LOA, GRT, & NT; no restrictions on HP	
Concurrently issued, or eligible to renew, Incidental shark; Directed swordfish; and Atlantic Tunas Longline category permit on August 6, 2007.	35% LOA, GRT, & NT; no restrictions on HP	
Concurrently issued, or eligible to renew, Directed shark; Incidental swordfish; and Atlantic Tunas Longline category permit on August 6, 2007.	35% LOA, GRT, & NT; no restrictions on HP	